

ADDRESS

To the Legislature of Manitoba, March 1st, 1916, by Hon. A. B.

Hudson, Attorney-General, on the repeal of the bilingual clause of the Public Schools Act, section 258, which read:

"When ten of the pupils in any school speak the French language, or any language other than English, as their native tongue, the teaching of such pupils shall be conducted in French, or such other language, and English upon the bilingual system."

Mr. Speaker:

I do not propose to go through all the various matters that warrant consideration. Hon. gentlemen on both sides have dealt with many of them at considerable length. I propose simply to add two or three arguments on the constitutional aspect of the question. As the members of this house are aware, the Treaty of Paris, signed in 1763, ceded to England what was then Canada. If I understand the claims set up by the honorable gentlemen on the other side, they think they have certain language rights under that treaty. I have read it over and over, but I cannot find anything to support their claims. There is a provision that the religion of the people be respected and that has been carried out.

That treaty, I do not think, ever applied to that part of Canada which is now Manitoba and Western Canada. As I have said, I do not think the Treaty of Paris confers any of the rights claimed by the honorable gentlemen opposite. But if it does confer such rights they cannot affect Manitoba. In order to see this, we must go back to the original acquisition of the West by a European country. I need not go into the history of the Hudson's Bay Company, except to refer to the granting of its charter in 1670. At that time the English government purported to grant a company of English traders the right to trade in territories bordering on Hudson's Bay, including the tributary rivers, streams, lakes, seas and adjacent lands. That was a very complete and far-reaching grant, and

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no doubt its validity might have been questioned. Up to that time there had not been any exploration of Western Canada by Europeans. Any rights that the English government had were acquired by the explorations and discoveries of the lands immediately adjoining Hudson Bay. However, the company got this charter and followed it up. It did not permit the rights to lapse. It established forts, some of which were afterwards taken by the French in war but, the territory was restored to Great Britain by the Treaty of Utrecht in 1710. That treaty recognized the rights of the Hudson's Bay Company in that territory so far as it extended. Following that there is the claim that explorers from Eastern Canada were the first to reach the western prairies and streams. If that claim is well founded these explorers did nothing to define their rights or take settled possession.

The first act of any kind that I have been able to find exhibiting the exercise of sovereignty, was the grant by the Hudson's Bay Company to Lord Selkirk of a tract which comprises Southern Manitoba northward to Lake Winnipeg. That was in 1808. Lord Selkirk brought a number of settlers to this country and placed them on farms, granting them title to the lands. He gave them lands along the Red River, some of which are in what is now the city of Winnipeg, and others are in what is now the city of St. Boniface. The source of the title that these settlers obtained was Lord Selkirk, who in turn held title from the Hudson's Bay Company. The lands obtained by the Church of England and by the Presbyterian Church in Kildonan and the Catholic Church in St. Boniface were obtained in this way. No one claims these titles to be defective.

COLONY OF ASSINIBOIA

Now in 1839 the Hudson's Bay Company established here a district for the purpose of Government. It was called the District or Colony of Assiniboia, and the company created a council for the government of the territory. It appointed an officer as the governor, and a number of prominent men residing here were made members of the council. They included the Archbishop of Rupert's Land and the Archbishop of St. Boniface. These gentlemen took part in the making of laws for this

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country up to 1870, and acted in every way as a government. They must have known what they were doing. They must have been among the first entitled to the rights which the honorable gentlemen opposite can lay claim, and they recognized the rights of the Hudson's Bay Company because they acted under the Company's authority.

The next question, then, is what were the rights of the Hudson's Bay Company? I say that the rights became absolute as far as its charter permitted. This was a British colony from 1670, when that charter was granted up to the present time. This question has been the subject of many judicial decisions.

BRITISH COLONY SINCE 1670

In 1841, the Company had among its officers a lawyer named Adam Thom. He held a judicial position as "Recorder," and decided that British law had been in force since 1670 in the territory and should be followed. The next case came up in 1874. It was the trial of Ambrose Lepine, who had been concerned in the unfortunate affair of 1869-70. Lepine was tried before Chief Justice Wood, and it was necessary to decide what law was in force prior to 1870. The Chief Justice decided that the English law had come into force when the Hudson's Bay Company received its charter in 1670. In 1884 the question came up again in the Court of the King's Bench, before the late Chief Justice Killam, who decided that the Hudson's Bay Company's charter was valid, except possibly as to a monopoly of trading rights; that the government which the company had established was legal; and that the laws that government had promulgated were in force; In short, he decided that the Hudson's Bay territory, including what is now Manitoba, had become an English colony in 1670.

That decision was followed by another in the case of Sinclair vs. Mulligan, which came up before Chief Justice Killam in the first instance, and he decided, as he had done before. Then it came before the court of appeal, or the full court as it then was, who decided unanimously (by the late Chief Justice Taylor, the late Chief Justice Dubuc and Mr. Justice Bain), that the Killam decision was correct, and that the English law was ap-

plicable to everything that had occurred since 1670 in so far as it had not been changed by the Council of Assiniboia. So there can be no question in any one's mind that this has always been a British colony.

This alone, I submit, would be absolutely conclusive. But we have more. From 1880 to 1884 the boundaries between Manitoba and Ontario were the subject of a great deal of discussion. There was an arbitration in the first place between the Dominion and Ontario as to where these boundaries should be, and afterwards there was a reference to the Privy Council, to which the Province of Manitoba and the Province of Ontario were parties. It was then set up by the Province of Ontario that the boundaries of Ontario were co-extensive with the original Province of Quebec that was ceded by the treaty of 1763, except what is now the Province of Quebec. The Privy Council decided that the boundaries of Manitoba were to stay as they were now fixed, and it could not have come to that decision had it not recognized the grant to the Hudson's Bay Company in 1670. That judgment was confirmed by an Imperial Statute in 1889, so that the honorable gentlemen opposite have nothing in the way of treaty rights prior to 1870 on which they can depend.

FIRST SCHOOL CASE DECISION

Now as to what occurred in 1870. Hon. gentlemen say a petition was sent to parliament by representatives of settlers here claiming certain rights which were recognized. If that be true, and it is true to a certain extent, what was then arranged was incorporated in the Manitoba Act. Now, the hon. gentlemen say they have got something in that Act which entitles them to consideration. They point to clause 22, (see appendix page 7), providing that the province was to have exclusive rights to deal with education except as hereinafter provided; and it was provided that no law should be passed which might prejudicially affect the rights of any religious denomination. That meant that if any class of people had a right to denominational schools at that time, this province had no power to pass a law prejudicially affecting them. The first school case went to the Privy Council for decision under the

School Act of 1890. It was decided that the 1890 Act did not prejudicially affect the rights of Roman Catholics as they were prior to 1870, and that the Act was within the powers of the Province.

The hon. gentlemen make reference to sub-section 2 of this section of the Manitoba Act providing for an appeal to parliament in respect of legislation affecting religious rights. That sub-section came before the Privy Council in the Brophy case in 1895, and it was then decided that the School Act of 1890 had affected the rights or privileges of the Roman Catholic minority in relation to education. This was owing to the fact that in 1870 a Public Schools Act had been passed creating separate schools for Catholics, and the rights which had accrued under that Act had been affected, not prejudicially affected, but simply affected.

This did not mean that the Act of 1890 was beyond the powers of the Province. All that it meant was that rights had been affected in such a way as to justify the Roman Catholic minority in applying for remedial legislation. The matter was placed in the hands of the Dominion parliament to decide—not whether any rights had been prejudicially affected, but to decide whether they had been affected at all. And so the remedial order was applied for. The order became the subject of a great deal of discussion, and the remedial order was eventually dropped, the Laurier-Greenway settlement being entered into.

CLAIM CERTAIN RIGHTS

If I understand the hon. gentlemen opposite, they claim that under that clause of the Manitoba Act, relating to appeal, they have certain rights. I would point this out. It refers to the Roman Catholics and Protestants as classes, but says nothing about Catholic French Canadians or Orthodox Greek Ruthenians or any other such classes. It refers to nothing except the two great classes of Roman Catholics and Protestants. It does not refer to race or language at all.

The only other clause that can be referred to by the hon. gentlemen opposite is clause 23, (see appendix page 7), which,

states that English or French may be used in the debates of the legislature and that the records must be printed in both languages. This was repealed by this legislature, and so far as I know, no protest was ever made, except what might have occurred during the debate on the repeal bill. No question of ultra vires has ever been raised.

In all the litigation on the subject of education, the question of language has never been raised. It has had to do solely with religion. In 1897 the Laurier-Greenway settlement was made and incorporated in the Public Schools Act. It contained ten or eleven clauses, all relating to religion except one. That became clause 258 of the Public Schools Act, which clause we now propose to repeal. We do not intend to ask the legislature to change the clauses in so far as they relate to religion. The clause we propose to deal with is quite apart from religion. The hon. gentlemen say that this is a sacred compact, but they never accepted it as a final settlement. This means that it is to be held sacred so far as we are concerned, but not so far as they are concerned. Unless it was a complete settlement, there is no reason why we should not break it as well as they. There is no foundation for any charge of impropriety. We have the power to repeal clause 258, which was passed by this legislature, and there is nothing in the Laurier-Greenway settlement which prevents us from doing so. I think further, although I am not sure of this, that the hon. gentlemen opposite have no right to apply for a remedial order. They might apply, but I do not think that the Dominion government has any power to grant it where a question of language alone is concerned. And that, it seems to me, is the only thing on which the hon. gentlemen can base any arguments.

So far as the legal and constitutional aspects of the question are concerned, so far as treaty rights are concerned, it seems to me that we are on absolutely safe and perfect ground.

APPENDIX

Legislative provisions referred to in the address.

MANITOBA ACT 1870

Statutes of Canada.

Chapter 3

Sec. 22.

In and for the Province, the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the Province at the Union;

2. An appeal shall lie to the Governor-General-in-Council from any Act or decision of the Legislature of the Province, or of any Provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education;

3. In case any such Provincial law, as from time to time seems to the Governor-General-in-Council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the Governor-General-in-Council on any appeal under this section is not duly executed by the proper Provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provision of this section, and of any decision of the Governor-General-in-Council under this section.

Sec. 23.

Either the English or the French language may be used by any person in the debates of the Houses of the Legislature,

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and both those languages shall be used in the respective records and journals of those Houses; and either of those languages may be used by any person, or in any pleading or process, in or issuing from any court of Canada established under "The British North America Act, 1867," or in or from all or any of the courts of the Province. The Acts of the Legislature shall be printed and published in both those languages.

(By Act of the Provincial Legislature, so far as that Legislature has jurisdiction to enact, the English language alone is to be used in the records and journals of the Legislative Assembly and in the pleadings and process of the courts.)

REVISED STATUTES OF MANITOBA, 1913

Chapter 147

An Act to provide that the English Language shall be the Official Language of the Province of Manitoba.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

1. Any statute or law to the contrary notwithstanding the English language only shall be used in the records and journals of the House of Assembly for the Province of Manitoba, and in any pleadings or process in or issuing from any court in the Province of Manitoba. The Acts of the Legislature of the Province of Manitoba need only be printed and published in the English language. R.S.M. c 126, s. 1.

2. This Act shall only apply so far as this Legislature has jurisdiction to enact. R.S.M. c. 126, s. 2.

(This was enacted on March 31, 1890. No question of ultra vires has ever been raised.)